

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE: BRIMONIDINE PATENT
LITIGATION

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C.A. No. 07-MD-01866-GMS

STIPULATION TO AMEND SCHEDULING ORDER

WHEREAS, On June 3, 2008, this Court entered an agreed Scheduling Order (D.I. 28), which provides for the conclusion of fact discovery on August 29, 2008 with expert discovery to commence shortly thereafter;

WHEREAS, since entry of the Court's Scheduling Order, the Parties have engaged in extensive fact discovery; however, the Parties agree they will be unable to complete fact and expert discovery prior to the original deadline of November 21, 2008;

WHEREAS, document discovery has taken much longer than expected, and the document production (relating to the five patents in suit) has been voluminous;

WHEREAS, the Parties are still in the process of producing additional documents;

WHEREAS, the Court's schedule allows for 130 hours of deposition shared among Apotex and Exela, and 150 hours by Allergan, to be divided equally for use with Apotex and Exela, and pursuant to the current schedule, all depositions must be completed on August 29, 2008;

WHEREAS, Exela PharmSci, Inc. and Exela Pharm Sci Pvt., Ltd (collectively "Exela") represent that lead counsel has recently changed firms and Exela has hired new lead counsel who is getting up to speed on the issues in order to complete fact and expert discovery;

WHEREAS, the Parties agree an extension of the fact discovery and expert discovery dates is necessary to allow the Parties to adequately prepare for the March 9, 2009 trial;

WHEREAS, the proposed deadlines do not affect the Pre-Trial Conference, Trial or any other dates on the Court's calendar;

NOW, THEREFORE, the Parties hereby stipulate, subject to the Court's approval, that the Scheduling Order shall be amended as follows:

- (a) The close of fact discovery shall be extended from August 29, 2008 to October 1, 2008;
- (b) The exchange of opening expert reports by the party with the burden of proof on an issue shall be extended from September 5, 2008 to October 3, 2008;
- (c) The exchange of responsive expert reports shall be extended from September 26, 2008 to October 24, 2008;
- (d) The exchange of rebuttal expert reports shall be extended from October 17, 2008 to November 7, 2008; and
- (e) The close of expert discovery will be extended from November 21, 2008 to December 5, 2008.

The Parties further stipulate and agree that the purpose of extending fact discovery is to allow the Parties to conduct fact depositions pursuant to the Court's Scheduling Order; the extension will not allow for additional written discovery requests on any party to this litigation; and the proposed amended schedule will have no effect on dates unrelated to fact and expert discovery, including the scheduled March 9, 2009 trial date.

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IT IS SO ORDERED this _____ day of _____, 2008.

Chief Judge Gregory M. Sleet

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